S.B.Civil Revision Petition No.893/2000

Pyarelal.
vs.
Banwari Lal and others.

Date : 17.7.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. SL Jain, for the petitioner.

Mr. VK Agrawal) for the respondents
Mr. NL Joshi)

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At the request of learned counsel for the parties, the revision petition is heard finally.

The present revision petition is directed against the order of the trial court dated 30.8.2000 by which the applicant/petitioner's application for being impleaded as party filed under Order 1 Rule 10 CPC in a suit for specific performance of contract by respondent no.1/plaintiff Banwari Lal was dismissed.

According to learned counsel for the petitioner, the plaintiff/respondent no.1 filed a suit for specific performance of contract against the respondents no.2 to 5 seeking relief of specific performance of contract dated 6.3.1987 whereas the petitioner is a lessee who obtained lease from Municipal Board, Sri Vijaynagar in the year 1991. According to learned counsel for the petitioner, in

case, any decree will be passed, the petitioner will be adversely affected. It is also submitted that this Court in the case of Shanti Lal vs. Laxmi Narain and another reported in RLW 1997(3) Raj. 2066 has held that in case, where the party should have been impleaded and has not been impleaded, then that party can be impleaded in the suit on application. Learned counsel for the petitioner also relied upon a judgment of the Patna High Court delivered in the case of Birbal Yadav vs. Suchan Thakur and others reported in AIR 1999 Patna 6. It is also submitted that against the subsequent owner, the relief can be granted under Section 19 of the Specific Reliefs Act.

I have considered the submissions of learned counsel for the petitioner and perused the facts of the case.

In a suit for specific performance of contract, normally the strangers are not necessary parties but in some circumstances, they are unnecessary parties, even if they are claiming ownership over the property involved in the suit. In the present case, as submitted by learned counsel for the petitioner, plaintiff Banwari Lal filed suit for specific performance of contract which was alleged to have been executed by the respondents no.2 to 5 on 6.3.1987. The petitioner obtained lease from Municipal Board, Sri Vijaynagar in the year 1991. The trial court also took note of this fact that in a suit which was filed in the year 1990, the petitioner obtained lease deed from Municipal Board in the year 1991.

Apart from the above, no relief is claimed by the plaintiff obviously for the reason that no other relief can be claimed by the plaintiff in a suit for specific performance of contract against the petitioner who is not claiming through the vendors – respondents no.2 to 5. Therefore, the petitioner was rightly held to be not a necessary party.

So far as the judgment of this Court in the case of Shanti Lal (supra) is concerned, it is clear that in that case, this Court clearly held that the party was necessary and it ought to have been joined but it has not been joined, therefore, he was impleaded as party whereas in this case, the petitioner is not a necessary party.

In view of the above, the order passed by the court below suffers from no error.

In view of the above discussion, I do not find any merit in the revision petition and the same is hereby dismissed.

The trial court is requested to decide the suit expeditiously.

(PRAKASH TATIA), J.

S.Phophaliya